

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**KENNETH J. PHELAN,**

**Plaintiff,**

**v.**

**9:10-CV-666  
(FJS/RFT)**

**M. DURNIAK, Correctional Officer, Auburn  
Correctional Facility; WISE, Sergeant, Auburn  
Correctional Facility; H. GRAHAM, Superintendent,  
Auburn Correctional Facility; HAGGETT, Warden,  
Mt. McGregor Correctional Facility; BRIAN  
FISCHER, Commissioner, NYS DOCS; and AUBIN,  
Correction Officer, Auburn Correctional Facility,**

**Defendants.**

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**APPEARANCES**

**OF COUNSEL**

**KENNETH J. PHELAN**  
**09-A-1183**  
Marcy Correctional Facility  
P.O. Box 3600  
Marcy, New York 13403  
Plaintiff *pro se*

**OFFICE OF THE NEW YORK  
STATE ATTORNEY GENERAL**  
The Capitol  
Albany, New York 12224  
Attorneys for Defendants

**C. HARRIS DAGUE, AAG**

**SCULLIN, Senior Judge**

**ORDER**

Plaintiff brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendants (1) sexually and verbally harassed him because he is an Irish-American with red hair; (2) violated his due process rights by placing him on shower restriction without notice or a hearing; (3) kept him

confined in constitutionally insufficient conditions; and (4) retaliated against him for declining sexual advances and filing grievances. *See generally* Dkt. No. 16, Amended Complaint.

Defendants filed a motion for summary judgment, *see* Dkt. No. 58, which Plaintiff opposed, *see* Dkt. No. 65. On September 25, 2013, Magistrate Judge Treece issued a well-reasoned and comprehensive Report-Recommendation and Order, in which he recommended that this Court grant Defendants' motion and dismiss this action in its entirety. *See generally* Dkt. No. 70.

Plaintiff filed objections to these recommendations. *See generally* Dkt. No. 74.

When a party makes specific objections to portions of a magistrate judge's report and recommendation, the court conducts a *de novo* review of those recommendations. *See Trombley v. O'Neill*, No. 8:11-CV-0569, 2011 WL 5881781, \*2 (N.D.N.Y. Nov. 23, 2011) (citing Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1)(C)). Where a party makes only conclusory or general objections, however, the court reviews the report and recommendation for "clear error" only. *See Salmini v. Astrue*, No. 3:06-CV-458, 2009 WL 1794741, \*1 (N.D.N.Y. June 23, 2009) (quotation omitted). After conducting the appropriate review, a district court may decide to accept, reject or modify those recommendations. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. Sept. 29, 2009) (quoting 28 U.S.C. § 636(b)(1)(C)).

In light of Plaintiff's filing of objections, as well as his *pro se* status, the Court has conducted a *de novo* review of Magistrate Judge Treece's Report-Recommendation and Order. Having completed that review, the Court hereby

**ORDERS** that Magistrate Judge Treece's September 25, 2013 Report-Recommendation and Order is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

**ORDERS** that Defendants' motion for summary judgment is **GRANTED** and this action

is **DISMISSED** in its entirety; and the Court further

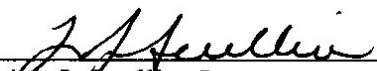
**ORDERS** that Plaintiff's motion for appointment of counsel, *see* Dkt. No. 76, which the Court received for filing on September 3, 2014, is **DENIED as moot**; and the Court further

**ORDERS** that the Clerk of the Court shall enter judgment in favor of Defendants and close this case; and the Court further

**ORDERS** that the Clerk of the Court shall serve a copy of this Order on the parties in accordance with the Local Rules.

**IT IS SO ORDERED.**

Dated: September 24, 2014  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge